

BEFORE THE
POSTAL REGULATORY COMMISSION
WASHINGTON, D.C. 20268-0001

ANNUAL COMPLIANCE REVIEW, 2015

Docket No. ACR2015

**RESPONSE OF UNITED STATES POSTAL SERVICE TO UNITED PARCEL
SERVICE INC.'S SECOND MOTION FOR ACCESS**
(January 19, 2016)

The United States Postal Service (Postal Service) hereby files its response to United Parcel Service Inc.'s (UPS's) second motion for access to certain non-public materials that the Postal Service filed in this docket.¹

As background, on January 11, 2016, UPS filed a second motion for access pursuant to Commission Rule 3001.21, 3007.40, and 3007.50, seeking access under protective conditions to the following non-public materials the Postal Service filed with the Postal Regulatory Commission (Commission) on December 29, 2015, in this docket:

1. USPS-FY15-NP2 - FY 2015 International Cost and Revenue Analysis (ICRA) Report
2. USPS-FY15-NP5 - FY 2015 ICRA Overview/ Technical Description
3. USPS-FY15-NP6 - FY 2015 International Cost Segment Spreadsheets
4. USPS-FY15-NP9 - FY 2015 Miscellaneous International Data
5. USPS-FY15-NP13 - FY 2015 CRA Model (Model Files, Cost Matrices, and Reports)
6. USPS-FY15-NP14 - FY 2015 CRA "B" Workpapers
7. USPS-FY15-NP22 - City Carrier Cost System (CCCS) Documentation.²

As UPS noted in its motion,

UPS conferred with the Postal Service regarding this request, and the

¹ United Parcel Service, Inc.'s Second Motion for Access, Docket No. ACR2015, January 11, 2016.

² *Id.* at 2.

Postal Service indicated that it could not speak for third parties whose information may be included in these non-public library references, and that it could not offer its position on this motion until after consulting with these third parties after UPS filed its motion.³

The Postal Service has consulted with a number of third parties listed in Appendix 1 of the application for non-public treatment that the Postal Service filed in this docket.⁴ As discussed below, some of those third parties have expressed deep concern about the implications of this request.

The Postal Service believes that the materials that are the subject of UPS' second motion for access are highly confidential and commercially sensitive, as outlined in the Postal Service's application for non-public treatment initially filed in this docket.⁵ The non-public materials at issue are described in detail in that application. Furthermore, these materials are information of a commercial nature, which under good business practice would not be publicly disclosed. As such, this information normally would be exempt from mandatory public disclosure pursuant to 39 U.S.C. § 410(c)(2) and 5 U.S.C. § 552(b)(3), (b)(4). Moreover, this information is highly confidential within the broader shipping services market.

Disclosure of the requested non-public materials could have a significant negative effect on the Postal Service's competitive contract business as a whole, as well as the Postal Service's ability to compete in the shipping services market. The growth of the Postal Service's shipping services business in recent years is a direct

³ *Id.*

⁴ See United States Postal Service FY2015 Annual Compliance Report, Docket No. ACR2015, December 29, 2015, Attachment Two, Appendix 1.

⁵ The Postal Service herein incorporates by reference its arguments, and the identified harms that would come from disclosure of these materials, that are contained in the Postal Service's Application for Non-Public Treatment in this docket. See United States Postal Service FY 2015 Annual Compliance Report, Docket No. ACR2015, December 29, 2015, Attachment Two.

result of the successes that the Postal Service has had in entering into contracts with mailers for mailing and shipping services, including various forms of international negotiated service agreements and agreements with foreign posts. The Postal Service would be at a serious disadvantage if customers have to accept the risk that such information would be shared with third parties or their representatives, particularly a major competitor and supplier in the shipping industry. The instant Motion has raised questions among key stakeholders, and leaves them concerned about how and the extent to which their confidential information that is filed at the Commission will be shared with others. Likewise, the Postal Service fears that if the Motion is granted, the outcome will have a chilling effect on third parties' interests in pursuing business with the Postal Service. In turn, the Postal Service would suffer potential loss of business and damaged business relationships. Disclosure of the non-public materials in the instant docket could have far-reaching effects on the Postal Service's shipping services business, and ultimately, its overall financial health.

While the UPS and the Commission may take comfort in the fact that UPS's representatives are willing to execute certifications representing their willingness to use the nonpublic materials solely for participation in this docket, and assert that they are not involved in competitive decision-making, these assurances do not protect against the potential for inadvertent disclosure that could arise any time the materials are replicated and saved outside the Postal Service's and Commission's files. Simply put, the more servers and authorized users that have access to the information, the greater the risk. Moreover, the parties to whom the information would be disclosed do not sign

standard nondisclosure agreements that provide further legal protections, as well as indemnification in the event of unauthorized disclosure.

The Postal Service has indeed received expressions of concern from its key business partners. Included with this response as Attachment 1 is a letter from the contractholder for the Global Reseller Expedited Package contract that is the subject of Docket No. CP2014-71 (“Counterparty”), who shares many of the Postal Service’s views expressed above. In the letter, the Counterparty strongly opposes the Motion. The Counterparty wishes to maintain its confidential status. In addition, the letter states that “disclosure of any highly, confidential, commercially sensitive information sought by UPS would unfairly and inappropriately place” the Counterparty “at significant competitive disadvantage.” The Counterparty affirms that the redacted information “is among the most protected, sensitive business information in any vendor-supplier relationship.”⁶

Also included with this response, as Attachment 2, is a letter from Canada Post Corporation, the designated postal operator of Canada. In the letter, Canada Post expresses views that are similar to those expressed by the Postal Service above. Canada Post respectfully asks that the Commission not grant “UPS consultants’ request for relief,” and “[i]f it does, Canada Post respectfully asks that the PRC exercise its powers under sub-sections (a) and (e) of Part 3007.60, Title 39 to restrict access to, and prohibit disclosure of the non-public, confidential and commercially-sensitive information

⁶ See Attachment 1, Letter from Jimbo to Cooper.

by, the outside counsel and consultants named” in UPS’s Notice of Filing Certifications of Compliance with Protective Conditions in Connection with Motions for Access.⁷

In view of the potential risks and harm to the Postal Service and its business relationships, the Postal Service respectfully requests that UPS reconsider and withdraw its request. In the event UPS declines to do so, the Postal Service urges the Commission to give due consideration to the objections raised by third parties as expressed in the attachments to this pleading.

Respectfully submitted,

UNITED STATES POSTAL SERVICE

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⁷ United Parcel Service, Inc.’s Notice of Filing Certifications of Compliance with Protective Conditions in Connection with Motions for Access, PRC Docket No. ACR2015, January 14, 2016.



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Re: United Parcel Service, Inc.'s Second Motion for Access (Docket No. ACR2015)

Dear Mr. Cooper:

We represent the counterparty (the "Counterparty") to United States Postal Service ("USPS") Global Reseller Expedited Package Contract Agreement (Docket No. CP2014-71) (the "Agreement"). As you know, as a counterparty to contract agreements with the USPS, the USPS files certain information relating to the Counterparty with the U.S. Postal Regulatory Commission ("PRC") each year as part of its Annual Compliance Report, including for fiscal year 2015 (PRC Docket No. ACR2015).

On January 15, 2016, the USPS advised my client that on January 11, United Parcel Service, Inc. ("UPS") filed a Motion for Access (the "Motion") with the PRC in connection with the FY2015 Annual Compliance Report, seeking access to nonpublic materials containing confidential information relating to or otherwise affecting the Counterparty. To the best of our knowledge, these materials include, but may not be limited to, certain Annexes filed as part of PRC Docket No. ACR2015 (USPS-FY15-NP2, USPS-FY15-NP8, USPS-FY15-NP13 and USPS-FY15-NP14), which reference, at a minimum, aggregated data and information related to the Counterparty's costs, volume and negotiated pricing under the Agreement.

You have advised the Counterparty that any opposition to the Motion is due January 19, 2016. It is our understanding that the USPS will be filing a response to the Motion. Given the limited notice afforded to the Counterparty, it will not be able to prepare and file its own opposition. Nevertheless, my client opposes the Motion and any disclosure of its confidential

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business information to UPS. My client therefore authorizes you to include or refer to this correspondence in connection with any response the USPS may file.

As you know, in order to protect its competitive position, the Counterparty has not been previously identified in the publicly available docket materials. For the reasons set forth below, my client wishes to maintain its confidential status and to prohibit the disclosure of any nonpublic, confidential business information. In the alternative, should the PRC grant the Motion and allow UPS access to the nonpublic materials, my client seeks additional assurances regarding the limited disclosure of any such information. Specifically, any information contained therein which relates to, identifies or otherwise concerns the Counterparty or the Agreement should be provided only to those outside counsel and consultants identified in UPS's Certifications of Compliance with Protective Conditions in Connection with Motions for Access filed January 14, 2016. The information provided to these individuals must not be cited publicly or disseminated to any other individual or third party for any purpose, and should only be used by these individuals in connection with the current proceedings before the PRC. Under no circumstances should such information or documents be provided to any member of UPS's business team, UPS in-house counsel or any other UPS employee, including any agents, representatives, or attorneys presently under contract with UPS, or anyone else acting on UPS's behalf.

It is the Counterparty's position that the disclosure of any highly confidential, commercially sensitive information sought by UPS would unfairly and inappropriately place my client at significant competitive disadvantage. The information sought directly reflects, and/or provides data which can be used to determine, many of the terms of the Agreement between my client and USPS. The terms of the Agreement are highly confidential and are not known within the broader market. The data and information being sought reflects competitively significant, sensitive commercial information, including revenue derived from the Counterparty, volume, pricing structure, rates and costs (among others). This information is among the most protected, sensitive business information in any vendor-supplier relationship. These terms are inherently commercially sensitive and were intended to remain confidential between the parties. Indeed, the very terms of the Agreement expressly require the USPS to seek confidential treatment for customer-specific information contained within the Agreement. On December 29, 2015, the USPS filed an Application for Non-Public Treatment of the very materials to which UPS now seeks access to, which was granted by the PRC.

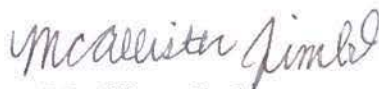
Disclosure of this highly confidential and commercially sensitive information would competitively harm my client. Competitors could use such information to evaluate revenues and profitability associated with my client's provision of certain products and services. Disclosure could also enable my client's competitors to compete unfairly with respect to other contracts that my client has in place, and may use the information to hinder if not thwart the ability of my client to secure future contracts.

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Accordingly, my client opposes UPS's Motion for Access to nonpublic information. Should UPS be granted access to the nonpublic materials, my client requests that at a minimum, all necessary steps be taken to restrict any further dissemination of such information.

Sincerely,

A handwritten signature in cursive script that reads "McAllister Jimbo".

McAllister Jimbo
for O'MELVENY & MYERS LLP

MMJ/ecm



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19 January 2016

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Re. Postal Regulatory Commission Filing 94682 of 14 January 2016, Docket ACR2015

Dear Mr. Alverno,

Canada Post appreciates this opportunity to make representations in respect of Filing 94682.

Canada Post has real and reasoned concerns about the risks posed by the unauthorised disclosure of certain non-public, confidential and commercially sensitive information. Canada Post and its many parcels customers operate in a fully competitive parcels market. Information about cross-border flows and pricing of parcels between Canada Post and the USPS is by its very nature both commercially sensitive and confidential. Disclosure to unauthorised parties would seriously disadvantage not only Canada Post, but also its customers.

In addition, the risks posed by such disclosure would set up a disincentive for Canadian mailers to use postal services in cross-border transactions with the US.

Canada Post respectfully asks that the PRC not grant the UPS consultants' request for relief. If it does, Canada Post respectfully asks that the PRC exercise its powers under sub-sections (a) and (e) of Part 3007.60, Title 39 to restrict access to, and prohibit disclosure of the non-public, confidential and commercially-sensitive information by, the outside counsel and consultants named in Filing 96482.

Sincerely,

A handwritten signature in black ink, appearing to be "RF", written over the word "Sincerely,".

Robert Fabes
Vice-President, General Counsel and Corporate Secretary
Canada Post